SINGLE BENCH

IN THE HIGH COURT OF JUDICATURE AT BILASPUR
CHHATTISGARH

W.P. NO. 4385 **/2005**

PETITIONER : Lina Jaiswal Wd/o. Late Girdharilal,
RESPONDENT Aged about 70 years, R/o. Ramanujganj Road, Ambikapur, Distt. Surguja (C.G.)

VERSUS

RESPONDENT : 1] Balram Jaiswal, Aged about 52 years,
ELECTION PETITIONER S/o. Late Jainarayan Prasad Jaiswal, Ward No. 18, Mahatma Gandhi Ward, Nagar Palik Nigam, Ambikapur, P.S. and Tahsil Ambikapur, Distt Surguja (C.G.)

P.R. No. 4526/05
Presented by Shri Abhishek Agrawal
dated 31.8.05

2] Shashiprabha Jaiswal W/o. Balram Jaiswal, R/o. Mahatma Gandhi Ward No. 18, Near Jaiswal Dharmshala, Bauripara, Nagar Palik Nigam, Ambikapur, Distt. Surguja (C.G.)

3] Bimla Soni W/o. Kapildev Soni, Aged about 45 years, R/o. Mahatma Gandhi Ward No. 18 (Ahead Kenabandh Pindh) Ambikapur, Distt. Surguja (C.G.)

4] Returning Officer, (Municipal Corporation, Ambikapur) (Collector, Surguja), Ambikapur, Distt. Surguja (C.G.)

5] Tahsildar, Ambikapur, District. Surguja (Chhattisgarh)

(Respondents No. 2 to 5 Respondents/Non-applicants)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(36)

मामला क्रमांक ..... W.P.4385/ ..... **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	16-9-2005 Heard Mr. Manoj Paranjpe, counsel for the petitioner, on admission. By this writ petition under Article 226/227 of the Constitution of India, the petitioner has questioned the legality, propriety and correctness of orders dated 4-8-2005 & 16-8-2005, whereby the trial Court has rejected the application filed by the petitioner herein under Order 6 Rule 17 of the C.P.C. for amendment of the written statement for raising the plea regarding the fact that the plaintiff is not entitled to file election petition and also that the election petition is time barred in view of the provisions of Section 441 (3) of the Chhattisgarh Municipal Corporation Act, 1956 (hereinafter referred to as 'the Act'), and rejected the application filed by the petitioner herein for framing additional issue under Order 14 Rule 5 of the C.P.C. The order impugned dated 4-8-2005 and the consequential order dated 16-8-2005 are, prima facie, perverse and liable to be set aside. Therefore, notice of this writ petition is not being issued to the respondents as the issuance of notice is going to cause further delay in the proceedings of the election petition. However, if the respondents still feel aggrieved by this order, then they will be at liberty to move an application before this Court for recalling/ modification of this order. Brief facts leading to filing of this writ petition are that respondent No.1 herein, the husband of respondent No.2 herein, filed an election petition questioning the election of the petitioner herein on the post of Councillor of Ward No.18, Municipal Corporation, Ambikapur, of which the petitioner herein filed written statement. Thereafter the petitioner	

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.4385/ **सन् 2005**

(37)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

herein moved an application under Order 6 Rule 17 of the C.P.C. for amendment of the written statement by inserting additional paragraphs 13 & 14 to the effect that the plaintiff is not entitled to challenge the election by filing an election petition and also that in view of the provisions of Section 441 (3) (i) of the Act, the election petition has not been filed within 30 days from the date on which the result of such election or from the date of publication in the Gazette, therefore, the election petition is time barred.

So far only issues were framed. Additional plea No.14 was regarding the legal issue and plea No.14 was regarding maintainability of the election petition. Therefore, learned trial Court ought to have allowed this amendment, but has refused, therefore, the impugned order dated 4-8-2005 is perverse and the same is liable to be set aside. Similarly, the subject matter of order dated 16-8-2005 will be consequential after amendment of written statement, that will be framing of the issue regarding right of the respondent herein to challenge the election and to file election petition. As such, the impugned orders are quashed and the trial Court is directed to proceed further after considering the application filed by the petitioner herein, in the light of above observation.

Accordingly, the writ petition is allowed. The orders impugned are quashed.

In view of this order, M.(W.)P.No.3567/2005 and I.A. No.7932/2005 stand disposed of.

Parties are entitled for certified copy of this order.

Sd/-
L.C. Bhadoo
Judge

21.9.05
29.10.05